

## CITY OF CHESAPEAKE

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November 8, 2010

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**Submitted Online ([www.regulations.gov](http://www.regulations.gov))**

Water Docket  
Environmental Protection Agency  
Mailcode: 28221T  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

**Re: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Draft Total Maximum Daily Load ("TMDL") for the Chesapeake Bay**

Dear Ms. Jackson:

The City of Chesapeake, Virginia ("City") welcomes the opportunity to comment on the draft Chesapeake Bay Total Maximum Daily Load ("Draft TMDL") issued by the United States Environmental Protection Agency (EPA) on September 24, 2010.

The City has for many years operated under an individual Phase I MS4 National Pollutant Discharge Elimination System (NPDES) permit issued by the Virginia Department of Conservation and Recreation and is looking forward to its third renewal in the near future. The City has committed significant resources under our storm water utility program to further local and regional efforts to improve water quality in both the Chesapeake Bay and the Albemarle Sound in North Carolina. The City remains committed to doing its part to meet reasonable Total Maximum Daily Load (TMDL) goals.

The City is a member of the Hampton Roads Planning District Commission (HRPDC) and the Virginia Municipal Stormwater Association (VAMSA), both of which organizations have analyzed the Draft TMDL with the assistance of scientific and environmental experts. The City fully endorses the position adopted by the member localities at the HRPDC meeting on October 20, 2010, and the position of the VAMSA, which jointly include:

- The EPA fails to consider cost, cost effectiveness and cost benefit in the imposition of the Draft TMDL goals.
- The EPA does not have the legal authority to establish a deadline for implementation of the Draft TMDL.

- The EPA has not provided reasonable assurance that the urban runoff sector allocations can be achieved by the arbitrary deadline of 2025.
- The EPA has failed to provide Virginia localities with a reasonable opportunity to review, evaluate and comment on the Draft TMDL.
- The Phase 5.3 model and model inputs used in the Draft TMDL are not sufficiently developed to produce reliable predictions.
- The modeling predictions used in the Draft TMDL do not justify use of the chlorophyll-a criteria as the basis for the James River basin allocations.

Additionally, the City is very concerned that the Draft TMDL places a staggering burden on local governments during a time of significant economic distress. The HRPDC's estimate for the total cost of implementing the Draft TMDL in the City of Chesapeake by 2025 is **\$1.367 billion** (\$210 million for Best Management Practice costs and \$1.157 billion in storage and re-use costs). This would modestly equate to an **annual per capita cost of approximately \$437**, which is calculated at the lower end of the range, and public and private expenditures of approximately **\$98 million a year**. The families and businesses of Chesapeake are already facing extreme financial hardships, making any additional burden of this magnitude completely untenable and unacceptable. Without significant state and federal assistance, this unfunded mandate will be impossible to support solely with local resources.



The EPA should also recognize that focusing on the urban runoff sector to provide significant reductions, primarily because localities are directly regulated through MS4 NPDES permits, fails to fully recognize that other currently unregulated sectors are major contributors to water quality impacts. The City encourages the EPA to work with the Commonwealth in perfecting its Watershed Improvement Plans (WIP) and in doing so, to exercise flexibility and consider the most cost effective means of improving water quality. The EPA's wholesale rejection of Virginia's proposal to expand its existing nutrient trading program reflects a lack of understanding of each local government's direct accountability to its citizens for efficient and economical services.

The 2025 deadline for achievement of the Draft TMDL pollutant reduction goals will be extremely difficult, if not impossible, given the legal, land use and fiscal issues involved. As proposed, meeting the TMDL goals recommended by the EPA would require significant reductions in pollutants through treatment of existing urban lands. Two immediate problems arise with this proposal. First, while new development has, and will continue to, construct and maintain BMPs to offset pollutant loading, the City has no authority to require existing development to retrofit private property to meet water quality goals. The only means of retrofitting existing private development would require the City to acquire land interests through acquisition or condemnation and install the necessary improvements. The costs associated with such an effort would be exorbitant and prohibitive. Thus, the EPA has failed to recognize that in the absence of re-development requiring local land use approvals, Virginia localities have no express or implied regulatory authority to require retrofits of existing private development. Second, the City is also severely limited in its ability to construct new BMPs needed to meet the pollutant reduction levels required by the Draft TMDL. The City directly controls less than 15% of property within the jurisdictional boundaries of Chesapeake, and the majority of that land is improved with roadway and utility infrastructure. This affords the City small opportunity for

BMP retrofitting without the purchase of additional real property interests or the reconstruction of its existing public facilities. Both options would be costly, inefficient and wasteful of public resources.

The City respectfully requests that the EPA give strong consideration to the technical comments provided by the HRPDC (provided under separate cover) in drafting the final TMDLs. The Hampton Roads localities have long benefited from regional cooperation in implementing MS4 NPDES permits and meeting water quality goals. On behalf of the City of Chesapeake, I trust that reasonable water quality goals, which fairly allocate pollutant load to each contributing sector in a cost effective manner, will be developed. The Chesapeake Bay, our City's namesake, remains a treasure in which our citizens are willing to invest to the extent practicable. We look forward to working with the Commonwealth and the EPA to identify reasonable TMDL goals that will serve restore and protect the Chesapeake Bay.

Sincerely,

  
Alan P. Krasnoff  
Mayor 

APK/sc

cc: The Honorable Doug Domenech, Secretary of Natural Resources  
Hampton Roads General Assembly Delegation  
The Honorable Members of City Council  
Stan D. Clark, Chairman, Hampton Roads Planning District Commission  
William E. Harrell, City Manager  
Ronald S. Hallman, City Attorney